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No. 108, Original

In the Supreme Court of the United States

OCTOBER TERM, 1986

Before the Honorable Owen Olpin
Special Master

STATE OF NEBRASKA,
Plaintiff,

v.

STATE OF WYOMING,
Defendant.

CAUTIONARY MOTION OF AMICUS CURIAE PLATTE RIVER TRUST FOR LEAVE TO FILE MEMORANDUM IN SUPPORT OF NEBRASKA'S AMENDED PETITION FOR APPORTIONMENT OF NON-IRRIGATION SEASON FLOWS AND FOR THE ASSERTION OF NEW CLAIMS

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The Platte River Whooping Crane Critical Habitat Maintenance Trust ("the Trust") submits this cautionary motion for leave to file its Memorandum In Support of Nebraska's Amended Petition filed with this Court on November 12, 1991. In support of its motion, the Trust states as follows:

1. The Trust is a non-profit organization whose mission is to protect and enhance the Platte River critical habitat and other migratory and resident bird

habitat regions of the Platte and North Platte Rivers. Since its organization in 1980, the Trust and its staff of scientists have been engaged in studying and reclaiming the Platte River habitat.

2. A three-person Board of Trustees governs the Trust. The State of Nebraska, the Missouri Basin Power Project, and the National Wildlife Federation each appoint one trustee. Because of the diverse interests appointing its trustees, the Trust has become an excellent source of objective scientific information based on the Trust's long-term direct studies and expertise.

3. On April 1, 1988, Special Master Owen Olpin granted the Trust amicus curiae status in this case which concerns the apportionment of irrigation season flows of the North Platte River among Nebraska, Wyoming, Colorado, and the United States. On March 13, 1991, the State of Nebraska requested that the Special Master recommend to this Court an apportionment of the *non-irrigation* season natural flows of the North Platte River. The Trust supported Nebraska's motion. The Special Master denied Nebraska's motion, suggesting that Nebraska should instead file an amended petition directly with the Court.

4. On October 9, 1991, Nebraska filed her motion with the Court for leave to file an amended petition to apportion the non-irrigation season flows. Nebraska's motion included a request for the assertion of new claims, as well as a brief in support ("Nebraska Amended Petition" and "Nebraska Brief").

5. On November 12, 1991 the Trust filed a brief in support of Nebraska's motion for leave to file an amended petition. The Trust argues that (1) the Court

may invoke its original jurisdiction over the amended petition, (2) the close relationship between irrigation and non-irrigation season flows requires that the Court exercise its original jurisdiction, and (3) to avoid irreversible injury to the wildlife habitat the Court must exercise its original jurisdiction.

6. As the Trust filed its brief in response to the Special Master's suggestion and the Court's rules do not appear to require an accompanying motion for leave to file, the Trust filed its brief without an accompanying motion.

7. The Trust submits its cautionary motion at this time in the event that the protocol of the Supreme Court does require such a motion.

Respectfully submitted,

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